IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4841 of 2007()

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CRIME NO.25/07 OF KOTTARAKARA POLICE STATION

PETITIONERS/ACCUSED NOS.1,3 AND 4

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1. G.SUDHAKARAN NAIR,
   S/O. GOPALAN,
   UDAYAMUTTATHU VEEDU,
   THAZHAKULAKKADA, KOTTARAKARA.

2. G.MURALEEDHARAN NAIR,
   S/O. GOPALAN,
   UDAYAMUTTATHU VEEDU,
   THAZHAKULAKKADA, KOTTARAKARA.

3. G.MADHAVAN NAIR,
   S/O. GOPALAN,
   UDAYAMUTTATHU VEEDU,
   THAZHAKULAKKADA,KOTTARAKARA.

BY ADV. SRI.PREMCHAND R.NAIR

RESPONDENTS:

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STATE OF KERALA REPRESETED BY
SUB INSPECTOR OF POLICE,
KOTTARAKARA POLICE STATION, REPRESENTED THROUGH
PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 4841 OF 2007**

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Dated this the 14th day of August, 2007

**ORDER**

Application for anticipatory bail. The petitioners are accused 1, 3 and 4. They face allegations under Sec.4(1) read with Sec.21(1) of the Mines and Minerals (Development and Regulation) Act and Sec.12(4) read with Sec.20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act. There is also an allegation that the offences under Secs.447 and 379 of the IPC have been committed.

2. The crux of the allegations against the accused persons – four in number in all, is that they illegally extracted river sand and clay contrary to the provisions of the relevant Statutes without any legal authority. The 2nd accused had come before this Court with an application for anticipatory bail. The said application was dismissed; but it was observed that the said accused can surrender before the Investigating

Officer. He had accordingly surrendered before the Investigating Officer. He has been enlarged on bail also. The petitioners also claim that anticipatory bail may be granted to them.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the extraction of river sand and clay in an organised manner at a large scale was being carried on in the premises in question. JCBs. etc., have been seized. There are no circumstances whatsoever which would justify the invocation of the discretion under Sec.438 of the Cr.P.C. in favour of the petitioners. This, submits the learned Public Prosecutor, is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course as was done by the co-accused – i.e., the 2nd accused.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. There are no features available in this case at all which would suggest the need to invoke the discretion under Sec.438 of the Cr.P.C. As rightly pointed out by the learned Public Prosecutor, this is a fit case where the petitioners must surrender before the

Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**Sd/-**
**(R. BASANT, JUDGE)**

**Nan**

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P.S. to Judge